Supreme Court, U.S.
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No. 92-182

In The

Supreme Court of the United States

October Term, 1992

LORNA L. WILLIAMS,

Petitioner,

v.

THE INCORPORATED CITY OF OKOBOJI, IOWA; BEN D. SAUNDERS, City Administrator; LEO PARKS, Mayor; HAL REED, CHRIS BJORNSTAD, KIRK STAUSS, SHARLENE HOUGE, JAMES GOLDEN, Council Members; and MICHAEL CHOZEN, City Attorney,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

Respondents respectfully oppose the Petition for a Writ of Certiorari to review the opinion of the Court of Appeals for the Eighth Circuit rendered on April 9, 1991.

STATEMENT OF THE CASE

In November of 1972, under the authority of Chapter 414 of the 1971 Code of Iowa, the City of Okoboji adopted

a Comprehensive Zoning Ordinance incorporating a comprehensive plan.

Lorna L. Williams, the Petitioner, has, since September of 1976, owned a dwelling house within the City of Okoboji, Iowa, described as part of Lot 10, Block D, Plat of Okoboji Park, in the City of Okoboji, Dickinson County, Iowa. The City of Okoboji is a resort community located in Northwest Iowa.

The property now owned by the Petitioner is located in an R-1, single family residential district, and the restrictions pertaining to the R-1, single family residential district appear in Article V of Ordinance No. 63. Uses permitted within the R-1, single family residential district appear in Section 2 of Article V of the Ordinance.

Under the 1972 Ordinance, "dwelling" is defined as a "building containing one or more dwelling units which is designed or used exclusively for residential purposes, but not including a tent, cabin, trailer or travel trailer". "Residential purposes" is defined as being:

> "The intent to use and/or the use of a room or group of rooms for living, sleeping and housekeeping activities for persons on a permanent or semi-permanent basis of an intended tenure of one month (30 days) or more."

The residential purpose definition was amended by the City's Ordinance No. 99 in August of 1988. The former definition was amended to read:

> "Residential Purposes. The intent to use and/or use of a room or group of rooms for the sleeping, living and housekeeping activities for the same person or same group of persons on a

permanent or semi-permanent basis of an intended tenure of one month (30 days) or more."

On April 21, 1980, the Okoboji Board of Adjustment granted Mrs. Williams a variance to convert her single family dwelling to a two-family dwelling as a special exception to the terms of the Ordinance. There is no question that Mrs. Williams has been renting a portion of her home for several years to various persons to whom she is unrelated and who are not members of her family for a period of less than thirty (30) days.

The City's purpose in drafting this unique Ordinance preventing rentals of less than thirty (30) days is to decrease party-spirited noise, littering, rowdiness and vandalism associated with vacationers and other transient users. The Planning and Zoning Commission had a desire to minimize littering, partying and potential vandalism, all of which are associated with the use of residential property in a resort area. The express purpose is to prevent the commercial use of residential properties in residential areas with the attendant problems inherent with transient rentals.

On May 9, 1989, at a regularly scheduled council meeting, the Okoboji City Council voted to authorize the City Attorney, Michael J. Chozen, to pursue an injunctive action against Mrs. Williams and any other persons violating the City Ordinance concerning rentals of residential property. The vote was unanimous, and at the City's direction, the City Attorney pursued injunctive relief against Mrs. Williams.

Some few days after the meeting, Mr. Chozen called Mrs. Williams and asked her to stop violating the Ordinance. He received a negative response, and on May 24, 1989, the City of Okoboji filed an equity action in Dickinson County (Equity No. 18193) which sought to restrain and enjoin Mrs. Williams from renting her property. A temporary injunction was issued at the behest of the Honorable Tom Hamilton, Judge, Third Judicial District. The City posted a surety bond in the amount of $6,500.00 to cover any lost rentals which may be sustained by Mrs. Williams.

In an effort to dissolve the temporary injunction, Mrs. Williams affirmatively denied that the Ordinance was constitutional, that it was vague, that it does not prohibit the activity that it attempts to proscribed, and that it violated certain constitutional rights such as the taking of any property, the right to travel, and equal protection, all in violation of Amendments 1, 14 and 16 of the United States Constitution. Essentially Mrs. Williams' defense in Dickinson County Law No. 18193 is the same as her position as Plaintiff in the instant action pending in Federal Court.

The Court should note the Dickinson County, Iowa District Court has now ruled the Ordinance at issue is constitutional. *Incorporated City of Okoboji v. Williams,* No. 18193, Judgment and Decree (Iowa District Court, September 30, 1991). (Resp. App. 1-7).

Shortly after the United States District Court for the Northern District of Iowa sustained the Respondents' Motion for Summary Judgment, the Petitioner/Plaintiff then refiled, in the same Court, the very same action

against the very same Defendants. The case is No. C91-4051. (Resp. App. 8-18). This case is currently pending before the Honorable Donald E. O'Brien, Judge, United States District for the Northern District of Iowa/ Western Division.

The Petitioner has stated no cogent reason for granting the Writ. Instead, she reargues both procedural and factual issues which have been decided adversely to the Petitioner by the United States District Court for the Northern District of Iowa/Western Division, the Eighth Circuit Court of Appeals, and the District Court for Dickinson County, Iowa. She raises no significant questions of law, and there is no conflict in the lower Courts.

The dismissal of the Plaintiff's complaint pursuant to Defendant/Respondent's Motion for Summary Judgment was warranted by the State of the record and the law. Judge O'Brien of the United States District Court for the Northern District of Iowa/Western Division correctly decided zoning matters are essentially local issues, and the Court should abstain pursuant to *Younger v. Harris,* 401 U.S. 37 (1971). Principles of equity, comity and federalism limit the United States District Court's discretion and jurisdiction.

REASONS WHY THE PETITION SHOULD BE DENIED

I. THE PETITIONER IS NOT DENIED EQUAL PROTECTION UNDER THE LAW BY THE DISMISSAL OF HER CASE IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA/WESTERN DIVISION.

Petitioner's central argument to this Court for granting the Writ seems to be based on denial of equal protection due to dismissal of her case in the United States District Court for the Northern District of Iowa/Western Division.

The Petitioner, Mrs. Williams, has had ample opportunity to air her complaints. She has not been denied equal protection in any Court. She has tried her case in the District Court for Dickinson County, Iowa and lost. The Ordinance was upheld as constitutional, and she was permanently enjoined from violating the Ordinance. (Resp. App. 1-7). Her complaint in the United States District Court for the Northern District of Iowa/Western Division was dismissed by summary judgment. (Pet. App. 7-12). Petitioner's appeal to the Eighth Circuit Court of Appeals was denied, and the decision of Judge O'Brien at the United States District Court for the Northern District of Iowa/Western Division was affirmed. (Pet. App. 1-4). The Petitioner, Mrs. Williams, certified law questions to the Iowa Supreme Court. The Petitioner's Motion for Certification of Iowa Law and Application for a Stay were overruled and denied on June 9, 1992. (Pet. App. 42).

Finally, after the summary judgment dismissal by the Honorable Donald E. O'Brien, Mrs. Williams filed an

identical action against the same Defendants in the same Court. (Resp. App. 8-18). This action is still pending in Judge O'Brien's Court.

The Petitioner can scarcely say that she has been denied due process. Losing one's case on the merits does not necessarily equate with a denial of due process.

II. ZONING ISSUES ARE UNIQUELY LOCAL AND SHOULD BE DECIDED IN A LOCAL VENUE.

The Petitioner is a part-time resident of a resort area in Northwest Iowa, namely the City of Okoboji, Iowa. She is a real property owner in the town if Okoboji, Iowa. As a real property owner, she has subjected herself voluntarily to the Zoning Ordinances of the City. She violated the Ordinances, and the City properly sought to enjoin her from continued violations. They did so, and the confrontation between the City and the Petitioner resulted in a lawsuit which was decided in the City's favor. (Resp. App. 1-7).

The Honorable Donald E. O'Brien agreed with the Respondents that State Courts litigating zoning disputes are properly granted an abiding deference by Federal Courts. *Kent Island Joint Venture v. Smith,* 425 F. Supp. 455 (N.D. 1978).

The issues brought by Mrs. Williams in the case at issue, which was dismissed, and her very recent filing, and also, the State action, are identical. It was proper for the United States District Court for the Northern District of Iowa/Western Division to abstain. The principles of

equity, comity and federalism limit the Court's jurisdiction. *Younger v. Harris,* 401 U.S. 37, 44 (1971). As Judge O'Brien stated in his decision, (Pet. App. 9) *Younger* abstention was appropriate, and the case was properly dismissed.

The Abstention Doctrine was first recognized in *Railroad Commission of Texas v. Pullman,* 312 U.S. 496, 61 S. Ct. 643 (1941). Abstention under *Pullman* and *Younger* is appropriate to avoid deciding of Federal constitutional issues where the case may be disposed of by decision on questions of State law. The State law questions were decided by the District Court in Dickinson County, Iowa.

Needless State and Federal friction is avoided by the proper use of the Abstention Doctrine; which doctrine prevents Federal interference with the administration by the State or municipality of its own totally local affairs. The object is to avoid "a great waste of effort over the validity of zoning ordinances", and such was the case in *Bible Truth Crusade v. City of Bloomington,* 709 F. Supp. 849 (C.D. Ill. 1989). As in Mrs. Williams' Federal complaint, the Plaintiffs in *Bible Truth Crusade* brought their action under 42 U.S.C. 1983 after the City of Bloomington, Illinois passed a zoning ordinance which affected the Plaintiff's property. The Court abstained, citing the same cases relied upon by the Respondent. Were this Court to permit every disappointed property owner to come directly into Federal Court under Section 1983 merely by alleging the local land use decision is unreasonable, arbitrary, capricious or discriminatory, the Court would be assuming the function of the statewide Court of zoning appeals with

the power to review every local zoning or land use decision in the State of Iowa. See *Kent Island Joint Venture v. Smith,* 425 F. Supp. 455, 464.

Judge O'Brien's decision and the Eighth Circuit's decision are not in conflict with the decision of any other circuit. *Lemke v. Cass County,* 846 F.2d 469 (8th Cir. 1987); *Creative Environments v. Estabrook,* 680 F.2d 822 (1st Cir. 1992); and *Chesterfield Development Corp. v. City of Chesterfield,* 758 F. Supp. 1309 (E.D. Mo. 1991); *Hawaii Housing Authority v. Midkiff,* 467 U.S. 229 (1984).

The Federal Courts, both at the district level and the circuit level, and certainly the United States Supreme Court, are not arbiters of zoning problems. Those issues are particularly germane to local governing bodies, be it zoning boards or district Courts.

CONCLUSION

For the reasons set forth above, the Respondents respectfully request this Court to deny Mrs. Williams' Petition for a Writ of Certiorari.

Respectfully submitted,

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Attorney for Respondents

APPENDIX

IN THE IOWA DISTRICT COURT
FOR DICKINSON COUNTY

THE INCORPORATED CITY OF OKOBOJI, IOWA, Plaintiff, v. LORNA L. WILLIAMS, Defendant.	*	NO. 18193 JUDGMENT AND DECREE (Filed Sept. 30, 1991)

This matter was submitted to the Court on May 2, 1991. Michael J. Chozen appeared on behalf of Plaintiff, City of Okoboji, Iowa (hereinafter City); Earl H. Maahs appeared on behalf of Defendant. At the conclusion of the evidence a briefing schedule was established with the final brief filed May 22, 1991. It has taken the Court a necessarily long time to determine this case, in part due to seven weeks of continuous jury trials this late summer. In any event, the Court has now finally had the opportunity to thoroughly review the matter and reach this decision. The actual trial of this case was short, testimony having been received from Okoboji City Administrator Ben Saunders, Okoboji Planning and Zoning Commission Chairman Marvin Kruse, Okoboji Board of Adjustment Chairman Owen Primavera, Real Estate Agent Kathleen Hinn, former Okoboji City Attorney R.W. Sackett, and the Defendant.

There have been three evidentiary hearings in this case. The first was in regard to the temporary injunction

originally issued ex parte (the injunction was ultimately dissolved); the second in connection with the City's Motion for Summary Judgment (overruled); and finally the trial itself. The rulings on both the Motion to Dissolve the Injunction and the Motion for Summary Judgment contained recitations of the factual background. A summary review of the facts will be made here; nothing factual appears different than was the case at the time of the other hearings.

FINDINGS OF FACT

On May 25, 1989, Plaintiff City filed an action against Defendant Williams claiming that Defendant is in violation of the City of Okoboji's zoning ordinance. Specifically, that the Defendant has entered into a lease or leases which entail a term of less than "one month or more". Plaintiff requested that the Defendant be enjoined and restrained from renting or leasing her real estate and premises for a term of less than one month.

In November of 1972, and under the authority of Chapter 414 of the 1971 Code of Iowa, the City adopted a comprehensive zoning ordinance incorporating a comprehensive plan. The property now owned by Mrs. Williams is located in the R-1 single family residential district, and the restrictions pertaining to the R-a single family residential district appear in Article V of Ordinance 63. (Plaintiff's Exhibit 1). Uses permitted within the R-1 single family residential district appear in Section 2 of Article V of the ordinance at page 27 of Exhibit 1.

Under the 1972 ordinance, "dwelling" is defined as "a building containing one or more dwelling units which

is designed or used exclusively for residential purposes, but not including a tent, cabin, trailer, or travel trailer".

Under the 1972 ordinance, "residential purposes" is defined as:

> "The intent to use and/or the use of a room or group of rooms for the living, sleeping, and housekeeping activities for persons on a permanent or semi-permanent basis of an intended tenure of one month or more."

In August of 1988, the City Council attempted to amend the definition of "residential purposes" by enacting Ordinance No. 99. (See attachments to Plaintiff's Exhibit 1). It is generally conceded that Ordinance No. 99 was not properly passed in 1988 because of a failure of publication of notice of hearing on said ordinance. However, on May 28, 1989, notice of hearing on the proposed ordinance (Ordinance No. 99) was given in compliance with Sections 414.5 and 362.3 of the 1989 Code of Iowa. On June 13, 1989, public hearing was held and Ordinance No. 99, as well as other city ordinances, was enacted. Section 380.8 of the Code of Iowa states in pertinent part that "an adopted code of ordinances is presumptive evidence of passage, publication, and content of the ordinances therein as of the dates of certification of the ordinance adopting the Code or supplement."

On April 21, 1980, the Okoboji Board of Adjustment granted Mrs. Williams a variance to convert her single family dwelling to a two family dwelling as a special exemption to the terms of the ordinance. Mrs. Williams has been renting a portion of her home for several years to various persons to whom she is unrelated and who are

not members of her family and for periods of less than 30 days.

Ordinance No. 99 describes "residential purposes" as follows:

> "The intent to use and/or the use of a room or group of rooms for the sleeping, living, and housekeeping activities for the same person or the same group of persons on a permanent or semi-permanent basis for an intended tenure of one month or more."

By ruling on Motion for Summary Judgment filed December 27, 1989, the undersigned determined that pursuant to the terms of Ordinance No. 99, that residential occupancies are limited to the living, sleeping, and housekeeping activities for the same person or same group of persons. Further, that any rental of less than one month is clearly prohibited by the ordinance. For purposes of that ruling, however, the ordinance, including its amendment, was assumed to have been properly passed and enforced.

On the basis of the facts presented, the Court concluded that it was clear that Mrs. Williams has been using her property in violation of the terms of the ordinance.

CONCLUSIONS OF LAW

The summary judgment ruling left as unresolved the determination of whether or not the ordinance itself is constitutional. It should further be noted that the summary judgment ruling was based on the terms of the

amended ordinance. Consequently, it is necessary to re-examine the status of the original ordinance as well as the amendment.

1. The City's Ordinance No. 63 was properly enacted in 1972.

2. Ordinance No. 99 was not properly enacted in 1988, but was properly enacted in 1989 as a part of Ordinance No. 108, an ordinance adopting the "Code of Ordinances" of the City of Okoboji, Iowa.

3. Ordinance No. 99 did not change the import of the term "residential purposes" as set out in the ordinance. It did, to some extent, clarify that definition. It did not create a new or different restriction on the use of residential property within the city.

4. Ordinance No. 63 is not constitutionally vague, either as originally enacted in 1972 or as amended in 1989. This matter was addressed at pages 5 through 9 of the City's Memorandum of Authority filed November 14, 1989, in connection with the City's Motion for Summary Judgment. The reasoning and citations therein are adopted as a part of this Decree.

5. The City's ordinance restricting rental of residential property in the R-1 zone to terms of tenancy of one month or more is not constitutionally unreasonable. In issue 1 of its trial brief filed April 30, 1991, the City exhaustively discusses the reasonableness issue. That brief point and the conclusions reached therein are adopted as part of this opinion as though set out in full. The conduct sought to be enjoined (Williams' rentals for periods of less than one month) clearly falls within the

ordinances proscription. Protection of residential integrity is a permissible purpose, and certainly whether or not the ordinances accomplishes the same is at a minimum "fairly debatable".

6. Defendant's affirmative defenses are all denied, same having not been proven.

IT IS ACCORDINGLY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Clerk of this Court shall enter an injunction enjoining and restraining the Defendant and all persons acting in privity with the Defendant from renting or leasing Defendant's residential property described as "A part of Lot Ten (10) Lot D, of the Plat of Okoboji Park, in the City of Okoboji, Dickinson County, Iowa, and a part of vacated Ottelia Street adjacent thereto, said entire tract being described as follows:

> Beginning at a point on the Northerly line of said Lot 10, lying North 53 degrees 36'35" West a distance of 38.46 feet from the Northeast corner of said Lot 10; thence North 53 degrees 36'35" West along the Northerly line of said Lot 10 a distance of 144.65 feet to the centerline of vacated Ottelia Street; thence South 2 degrees 26'10" East a distance of 192.12 feet; thence South 53 degrees 30' East a distance of 55.78 feet; thence North 24 degrees 29'00" East a distance of 153.07 feet to the point of beginning, containing 15000.6 square feet"

for a term of less than one month.

2. Costs of this action shall be assessed against Defendant.

DATED this 27th day of September 1991.

BY THE COURT
/s/ Frank B. Nelson
JUDGE FRANK B. NELSON
THIRD JUDICIAL DISTRICT

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September 30, 1991

SUMMONS IN A CIVIL ACTION

United States District Court

LORNA L. WILLIAMS, PLAINTIFF

V.

THE INCORPORATED CITY OF OKOBOJI, IOWA, BEN D. SAUNDERS, City Administrator for Okoboji, Iowa, individually and in his Official Capacity; LEO PARKS, Mayor, City Of Okoboji, Iowa, individually and in his Official Capacity; HAL REED, Council Member City of Okoboji, Iowa, individually and in his Official Capacity; CRIS BJORSTAD, Council Member, City of Okoboji, Iowa, individually and in his Official Capacity, KIRK STAUSS, Council Member, City of Okoboji, Iowa, Iowa [sic], individually and in his Official Capacity, CHARLENE Houge, Council Member, City of Okoboji, Iowa, individually and in her Official Capacity; MICHAEL CHOZEN, City Attorney, City of Okoboji, Iowa, individually and in his Official Capacity member City of Okoboji, Iowa, individually and in his Official Capacity,

DEFENDANTS

DISTRICT
NORTHERN DISTRICT-Western Division

DOCKET NO.
C 91-4051

TO: (NAME AND ADDRESS OF DEFENDANT)
MICHAEL CHOZEN, City Attorney, City of Okoboji, Iowa, individually and in his Official Capacity;
Terrace Park, Milford, Iowa
office: 832 Lake Street, Spirit Lake, Iowa

YOU ARE HEREBY SUMMONED and required to serve upon

Plaintiff's Attorney (Name and Address)

HENRY J. HAUGAN
509 Fifth Street
West Des Moines, Ia. 50265
Tel: (515) 277-4700

---

an answer to the complaint which is herewith served upon you, within TWENTY days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK
William J. Kanak

DATE
MAY 31 1991

(BY) DEPUTY CLERK
/s/ Gary L. Bohlke

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

LORNA L. WILLIAMS,

Plaintiff

v.

THE INCORPORATED CITY OF OKOBOJI, IOWA; BEN D. SAUNDERS, City Administrator for Okoboji, Iowa,

individually and in his Official Capacity; LEO PARKS, Mayor, City of Okoboji, Iowa, individually and in his Official Capicity [sic]; HAL REED, Council Member, City of Okoboji, Iowa, individually and in his Official Capacity; CRIS BJORSTAD, Council Member, City of Okoboji, Iowa, individually and in his Official Capacity; KIRK STAUSS, Council Member, City of Okoboji, Iowa, individually and in his Official Capacity; CHARLENE HOUGE, Council Member, City of Okoboji, Iowa, individually and in her Official Capacity; MICHAEL CHOZEN, City Attorney, City of Okoboji, Iowa, individually and in his Official Capacity, JAMES GOLDEN, Council Member, City of Okoboji, Iowa individually in and in his Official Capacity,

Defendants

CASE NO. C91-4051

PETITION IN EQUITY

(Filed May 23, 1991)

COMES NOW Plaintiff, Lorna L. Williams and for cause of action against Defendants individually and in their Official Capacities, states:

This is an action for compensatory and punitive damages as redress for deprivation of liberty and property rights under the FIRST and FOURTEENTH amendments, for attorney fees for Plaintiff's attorney and for Declaratory Judgment of Ordinances of Defendant City.

JURISDICTION

Jurisdiction is found in Sec. 42 U.S.C. 1983, Sec. 42 U.S.C. 1985(3), 42 U.S.C. 1986, 42 U.S.C. 1988, and 28

U.S.C. 1343, 28 U.S.C. 2283, 28 U.S.C. 2201 and 28 U.S.C. 2202.

PARTIES

Lorna L. Williams is a citizen of the United States and a resident of the State of Iowa.

That Plaintiff is the same Plaintiff in a previous civil rights action against Defendant City of Okoboji and its officials in *Williams v. Town of Okoboji, Ben Saunders and Leo* Parks, (CCA 8th 1979) 606 F.2d 812.

DEFENDANTS

Defendant City of Okoboji, Iowa is a municipal corporation duly organized and existing by virtue of the Iowa Statutes, located in Dickinson County, Iowa;

That Defendant Ben D. Saunders is City Administrator and Defendant Michael Chozen is City Attorney.

That Leo Parks is the mayor of Defendant City;

That Defendants Hal Reed, Chris Bjorstad, Kirk Stauss, Charlene Houge and James Golden are current members of the Okoboji City Council and all except Mr. Golden have been members since before August, 1988;

That all named Defendants are residents of Dickinson County, Iowa; that Defendants Ben D. Saunders and Defendant Leo Parks were Defendants in the aforementioned civil rights action; that Defendant Leo Parks, mayor resides next-door to Plaintiff's dwelling in Okoboji, Iowa.

STATEMENT OF CLAIM

1. That Plaintiff is the owner of real estate located in an R-1 residential District which permits two-family dwellings in Okoboji, Iowa;

2. That on April 12, 1980, the Defendant City's BOARD OF ADJUSTMENT granted Plaintiff a right to convert her single-family dwelling to a two-family dwelling as a rental property;

3. That at said hearing before the Board, she mentioned that she already had a one-week rental to a Des Moines family when she had the new unit built, to which notice there was no objection registered;

4. That without a complaint from anyone, Plaintiff for eight years rented the newly built dwelling unit on a one or two week basis to families in Iowa and surrounding States under the 1972 Ordinance which did not expressly prohibit such rental practice;

5. That on May 12, 1989, Defendant City, through a long-distance telephone call to Plaintiff, told Plaintiff she was violating the Amendment to the 1972 Ordinance, that the City Council had directed him to commence an injunction suit against her and told her to break all existing rental contracts of less than one-month terms;

6. That this threat of an injunction suit in keeping with the various acts of harassment and wrongful conduct of the Defendant City and Defendants Ben Saunders and Leo parks as detailed in *Williams v. Town of Okoboji*, et al., supra caused Plaintiff to have a flashback to those events which in turn caused immediate severe emotional

distress, mental anguish, and physicial [sic] injury from a fall which required hospital and medical attention;

7. That said threat also caused Plaintiff additional mental anguish and emotional distress by the thought of disappointing children and their parents by breaking their leases;

8. That said threat also caused Plaintiff additional mental anguish and emotional distress by disgruntled tenants when told of the threatened injunction suit that weekend threatened to sue Plaintiff for breach of contract;

9. That thereafter, and on May 24, 1989, Defendants obtained an *ex parte* ORDER (without notice and opportunity for a hearing) for a Temporary Injunction enjoining Plaintiff and her existing contract-tenants (not made parties) from less than one month leases.

10. That when Defendants obtained said *ex parte* ORDER for Temporary Injunction, they knew the 1972 Ordinance was too vague to support such action and they knew the Amendment was void for failure to properly adopt it with notice and public hearing required by the Iowa Statute;

11. That the 1972 Ordinance defined "Residential Purposes", referred to in Defendants' Petition reads:

> The intent to use and/or use of a room or group of rooms for the living, sleeping and housekeeping activities for persons on a permanent or semi-permanent basis of an intended tenure of one month or more.

12. That the Amendment, referred to and quoted from in Paragraph 6 of Defendants' Petition, reads:

> "Residential purposes"
>
> The intent to use and/or the use of a room or group of rooms for the *sleeping, living* and housekeeping activities for *the same person or the same group of persons* on a permanent or semipermanent basis of an intended tenure of one month or more." [Changes and additions underscored.]

14. That Defendants brought the action and secured the ORDER for Temporary Injunction pursuant to official decision, custom and policy, in concert, under color of State law against Plaintiff maliciously, unlawfully, wilfully, wontonly, intentionally and in reckless disregard of the Constitutional rights of this Plaintiff and in reckless disregard of the emotional distress and mental anguish their action which violated her constitutional rights under the First and Fourteenth amendment would bring;

15. That the Defendants obtained said *ex parte* ORDER as individuals among themselves in concert and agreement with Defendant City, its officials and employees, Defendant Ben Saunders and Defendant Leo Parks as part of a scheme of these named Defendants to intentionally hurt Plaintiff;

16. That from the public records since the commencement of said injunction action, Plaintiff has discovered that Defendant City in its corporation deed signed by Defendant Ben Saunders conveyed a portion of vacated

Ottelia Street to Defendant Leo Parks, instead of rightfully conveying that one-half of the street to Plaintiff's grantors, Roger Jones and Peggy Jones;

17. That this injunction action is part of a scheme by said named Defendants as City Administrator and Mayor to retaliate because Plaintiff purchased said land (including this portion wrongfully conveyed to Leo Parks) when they before she purchased the same tried to prevent her from buying it and after she bought it tried to keep her from completing the building of her dwelling with the aid of the Defendant City under color of State law in violation of Sec. 42 U.S.C. 1983. [Detailed acts were detailed by the Court in said *Williams v. Town of Okoboji, Ben Saunders and Leo Parks*, CCA 8th 1979, 606 F.2d 812.];

18. That Defendants also neglected to prevent the constitutional violations to Plaintiff in choosing not to talk to her when they would have discovered the wrongful conduct of said named Defendants;

19. That Defendants also neglected to prevent the constitutional violations they caused to Plaintiff in choosing not to seek a declaratory judgment action as a viable and as an effective alternative to the injunction suit;

19. That because of the threat and later the *ex parte* ORDER for Temporary Injunction, Plaintiff lost rental income from Mr. and Mrs. Joseph McQuire of Omaha Nebraska and from other persons seeking to rent Plaintiff's dwelling;

20. That the *ex parte* Order for temporary injunction was contrary to the clearly established law that the purpose of a temporary injunction is to maintain, not as here, to upset an eight-year status quo;

21. That Plaintiff was put to the expense of defendsaid injunction suit;

22. That said Temporary injunction action was terminated in Plaintiff's favor by a Court Ruling on June 29, 1989;

23. That the violation of procedural due process on the part of the Defendants in obtaining the *ex parte* ORDER without notice to plaintiff and opportunity for hearing is a violation of a right guaranteed by the Federal Constitution known to reasonable persons;

24. That Defendants aforesaid wrongful conduct in threatening to and finally obtaining the *ex parte* ORDER for Temporary Injunction under the egregious circumstances in this case was outrageous and intentional for which Defendants should compensate Plaintiff by punitive in addition to compensatory damaged;

STATEMENT OF CLAIM FOR DECLARATORY JUDGMENT

1. That Plaintiff as alleged is owner of a dwelling located in an R-1 residential District under the 1972 Ordinance of the Defendant Okoboji, Iowa;

2. That on June 16, 1989, adopted an amendment to its 1972 Ordinance defining "residential Purposes" which is still on the books, reading:

"Residential purposes"

> The intent to use and/or the use of a room or group of rooms for the sleeping, living and housekeeping activities for the same person or same group of persons on a permanent or semi-permanent basis of an intended tenure of one month or more.

3. That Plaintiff as an owner of said dwelling has not and conveniently cannot reside in said dwelling for four consecutive weeks, or one month;

4. That Plaintiff has real fear that Defendant City, its officials and employees in keeping with their past conduct against Plaintiff may seek action against her under said Amendment;

5. That Plaintiff believes, and so believing states that said Amendment on its face and as would be applied against Plaintiff as owner is unconstitutional and that the only way to solve the question is an adjudication by the Court;

WHEREFORE Plaintiff prays for compensatory and punitive damages against Defendants, individually and against the Defendant City for compensatory damages, all jointly and severally;

Plaintiff further prays that the above quoted Amendment as part of the Ordinances of the City of Okoboji, Iowa be declared unconstitutional on its face and as applied to this Plaintiff;

Plaintiff also prays for attorney fees for her attorney pursuant to Sec. 42 U.S.C. 1988, for the costs of this action

and for such further and alternative relief as to the Court seems just in the premises.

/s/ Henry J. Haugan
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ATTORNEY FOR PLAINTIFF